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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,967	09/16/2005	Wolfgang Kratzenberg	207,184	2231
38137 7590 10/02/2008 ABELMAN, FRAYNE & SCHWAB 666 THIRD AVENUE, 10TH FLOOR NEW YORK, NY 10017				
EXAMINER				
UBER, NATHAN C				
ART UNIT		PAPER NUMBER		
3622				
MAIL DATE		DELIVERY MODE		
10/02/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/549,967

Applicant(s)

KRATZENBERG, WOLFGANG

Examiner

NATHAN C. UBER

Art Unit

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date 6 June 2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. This action is in reply to the amendment filed on 6 June 2008.
2. Claims 1-18 were canceled by Applicant's amendment 6 June 2008.
3. Claims 19-28 were added by Applicant's amendment 6 June 2008.
4. Claims 19-28 are currently pending and have been examined.

Information Disclosure Statement

5. The Information Disclosure Statement filed on 6 June 2008 has been considered. An initialed copy of the Form 1449 is enclosed herewith.

Specification

6. The abstract of the disclosure was objected to in a previous office action. Satisfactory corrections were made. The objection is withdrawn.
7. The specification was objected to in a previous office action. Satisfactory corrections were made. The objection is withdrawn.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
9. Claims 1-18 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claims 1-18 were cancelled, accordingly the rejections are withdrawn.
10. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is indefinite because the limitation *with the plurality of interrogating devices*

being distributed over the sales area, and at least one of the plurality of interrogating devices being associated with at least one of the sales shelves does not agree or follow the preceding limitation a plurality of interrogating devices, with each interrogating device included in a respective one of the at least one touch screen devices. One having ordinary skill in the art cannot ascertain whether Applicant intends that interrogating devices are included in kiosks and also separately with shelves, or if Applicant intends that every interrogating device is included in the kiosks and the kiosks are distributed throughout the store and associated with shelves. For the purposes of this examination Examiner's interpretation will be that interrogating devices are associated with kiosks and also with shelves (i.e. not exclusively included with kiosks as the claim suggests) and that both the kiosks and the interrogating devices associated only with shelves maybe located throughout the store.

Claim Rejections - 35 USC § 101

11. Claims 8 and 11-17 were rejected under 35 U.S.C. 101 because the claims are directed to non-statutory subject matter. Claims 8 and 11-17 were canceled, accordingly the rejections are withdrawn.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
14. **Examiner's Note:** The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.
15. Claims 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Hagan et al. (U.S. 5,821,513) alone.

Claim 19:

O'Hagan, as shown, discloses the following limitations:

- *at least one central computer programmed for customer assistance (see at least column 4, line 35, host computer),*
- *a plurality of shopping containers, with each shopping container including a passive identification means for providing identity information that can be interrogated (see at least column 4, lines 28-33, a customer assistance terminal on the shopping cart comprises a transceiver for passive identification),*
- *a plurality of interrogating devices, with each interrogating device included in a respective one of the at least one touch screen devices (see at least column 4, lines 28-33, a customer assistance terminal on the shopping cart comprises a transceiver for passive identification, see also at least column 8, lines 47-52),*

- *with each interrogating device formed by a transmitter/receiver unit and in communication with the at least one central computer (see at least column 8, lines 64-67, see also at least column 4, lines 43-45, customer terminal is in communication with the host computer),*
- *with each interrogating device reading and conveying to the at least one central computer the identity information of a respective shopping container associated with the customer operating the respective at least one touch screen device (see at least column 4, lines 43-45, customer terminal is in communication with the host computer),*
- *with each interrogating device adapted to identify and transmit to the at least one central computer the respective identity information of the respective shopping container entering an area associated with the respective interrogating device (see at least column 8, lines 47-52, interacting with devices on shelves),*
- *with the plurality of interrogating devices being distributed over the sales area, and at least one of the plurality of interrogating devices being associated with at least one of the sales shelves (see at least column 8, line 50-53),*
- *a plurality of information output devices connected to the at least one central computer for outputting guidance and direction information to the customer, with each information output device being associated with one of the plurality of interrogating devices and adapted to being activated by at least one central computer upon detection of at least one shopping container by the associated interrogating device corresponding to the respective shopping container (see at least column 13, line 45-51, map to the product is displayed on the terminal)*

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- *at least one touch screen device arranged at the entrance to the sales area and connected to the at least one central computer, each at least one touch screen device allowing a customer to machine-readably identify at least one desired good or at least one desired group of goods, and to request help in finding the position of the associated sales shelves* (see at least column 4, lines 28-33 and 59-60, the customer terminal includes a touch screen, see also at least column 13, line 33, customer entering name of product into the system),

O'Hagan does not specifically disclose a customer terminal located at the entrance to the store. In the O'Hagan invention the device is mounted on the shopping basket. However it would have been obvious to one having ordinary skill in the art at the time of the invention that a shopping cart could be placed at the entrance to the store and further that one having ordinary skill in the art could alternatively mount the same device on a stationary object without changing any of the programming, construction or functionality of the device since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claims 20 and 21:

O'Hagan, as shown, discloses the following limitations:

- *the plurality of shopping containers includes at least one shopping cart* (see at least Figure 1),

O'Hagan does not specifically disclose *shopping basket* as in the claim below:

- *the plurality of shopping containers includes at least one shopping basket* (see at least Figure 1),

However it would have been obvious to one having ordinary skill in the art at the time of the invention to alternatively mount the customer assistance device on a shopping basket

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as well as on shopping cart without changing any of the programming, construction or functionality of the device since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claim 22:

O'Hagan, as shown, discloses the following limitations:

- *each passive identification means includes a transponder sending a specific information signal upon being interrogated (see at least column 8, lines 64-67, transponder).*

Claim 23:

O'Hagan, as shown, discloses the following limitations:

- *each of the sales shelves is associated with a respective interrogating device and with a respective information output device (see at least column 8, line 50-53, the IR/transponder devices are associated with the shelves, the customer terminal device may also be associate with a shelf as discussed above).*

Claim 24:

O'Hagan, as shown, discloses the following limitations:

- *the sales area includes a checkout area associated with at least one of the interrogating devices for identification and for transmitting to the at least one central computer the identity information of at least one of the plurality of shopping containers passing the checkout area (see at least column 12, lines 7-21, customer goes to cashier to checkout, the cashier terminal interacts with the customer terminal via the host computer through the network of transceivers or a LAN).*

Claim 25:

O'Hagan, as shown, discloses the following limitations:

- *each information output device includes a display panel for displaying at least one of text information and directional arrows (see at least figure 17).*

Claim 26:

O'Hagan, as shown, discloses the following limitations:

- *each information output device includes a display panel for providing advertising information, under the control of the at least one central computer, until at least one interrogating device associated with the information output device detects the arrival of at least one shopping container in the range of the respective at least one interrogating device (see at least column 10, lines 16-18, sending location based advertisements and adjusting the display based on the location of the customer).*

Claim 27:

O'Hagan, as shown, discloses the following limitations:

- *the at least one central computer generates guidance information upon an input to a respective touch screen associate with the customer, wherein the at least one central computer detects actual movement of the customer through the sales area via the plurality of interrogating devices, wherein the at least one central computer generated corrected guidance information in case the customer deviates from a proposed pathway through the sales area (see at least column 13, lines 32-33 and 45-51, providing a map to guide the customer to a product location, see also at least column 10, lines 5-6, tracking the customer location in the store).*

16. Claims 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Hagan et al. (U.S. 5,821,513) in view of DeTemple et al. (U.S. 5,572,653).

Claim 28:

O'Hagan discloses the limitations as shown in the rejection above. O'Hagan does not specifically disclose the following limitation. However, DeTemple, as shown, discloses the following limitation:

- *the at least one central computer records inputs from the touch screen devices and tracks information with respect to a plurality of customers based on information provided by the plurality of interrogating devices (see at least column 9, line 33-34, the tracking, product purchase, and customer behavior data that is tracked by the system is stored for further analysis in the central computer),*

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the data analysis capabilities and data storage capabilities of DeTemple with the customer assistance system of O'Hagan since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Response to Arguments

17. Applicant's arguments with respect to claims 19-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
19. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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20. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Nathan C Uber** whose telephone number is **571.270.3923**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Eric Stamber** can be reached at **571.272.6724**.
21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).
22. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

P.O. Box 1450, Alexandria, VA 22313-1450

or faxed to **571-273-8300**.

23. Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window**:

Randolph Building
401 Dulany Street
Alexandria, VA 22314.

/Nathan C Uber/ Examiner, Art Unit 3622
29 September 2008

/Arthur Duran/
Primary Examiner, Art Unit 3622